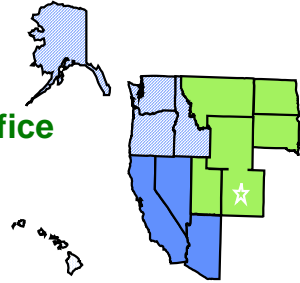




## U.S. Army Environmental Center Western Regional Environmental Office **REGIONAL UPDATE**



**JUNE 1999**

**REGION IX EDITION**

This publication provides current information on significant regulatory and legislative developments and related information in the Federal Region IX area (Arizona, California, Hawaii, and Nevada) that affect U.S. Army activities and operations. We appreciate your feedback and encourage you to submit suggestions for future discussion. Please contact us at the Western Regional Environmental Office, ATTN: SFIM-AEC-WR, Building 111, Commerce City, CO 80022-1748, commercial (303) 289-0125, DSN: 749-2125, FAX: (303) 289-0272, or e-mail: [redgerto@pmrma-emh1.army.mil](mailto:redgerto@pmrma-emh1.army.mil).

### **REGIONAL UPDATES/ALERTS AVAILABLE ON THE INTERNET**

Current and past issues of the *Regional Update* & *Regional Alerts* for Regions VIII, IX, and X are available on the Internet at <http://aec.army.mil/prod/usaec/ro/western/updates/wupdates.htm>.

## **FEDERAL REGULATORY DEVELOPMENTS**

### **Air Quality:**

#### **EPA Ozone and PM2.5 Rules Struck Down**

In a surprising victory for industry, on 14 May 1999, the United States Court of Appeals for the District of Columbia Circuit struck down the U.S. Environmental Protection Agency's (EPA) NAAQS for ozone and PM2.5. The court based its decision on the non-delegation doctrine, a legal principle that prohibits Congress from delegating to executive agencies (such as the EPA) Congress' legislative powers. According to the D.C. Circuit, the EPA acted as a legislative body rather than as an entity that merely implements legislation when it established the ozone and PM2.5 standards without an "'intelligible principle' to channel its application of 'the factors it considered.' The decision runs counter to many previously decided cases that grant the EPA considerable discretion to exercise policy judgment in setting standards when there is uncertainty about the health effects of pollutants. The court distinguished those earlier cases by pointing out that in those cases the non-delegation argument had not been presented. Expect this case to go to the Supreme Court. For more information, contact Ms. Diane Connolly at (303) 289-0459 (commercial) or 749-2459 (DSN).

### **Water Quality:**

#### **Proposed Revisions to the National Primary Drinking Water Regulations**

Public water systems must notify their customers when they violate the U.S. Environmental Protection Agency (EPA) or state drinking water standards or provide drinking water that may pose a risk to consumers' health. Under 1996 revisions to the Safe Drinking Water Act, the EPA is proposing revisions to the existing public notification rule to more specifically tailor the form, manner and timing of the notices for health risks. The proposal will require water systems to provide notice within 24 hours for violations posing an acute risk to health from short-term exposure. The current regulation requires such notices within 72 hours. The proposal also will allow water systems to group minor violations into a single annual report, rather than meet the existing requirement to provide separate notices within three months. The proposed rule is closely aligned with the related Consumer Confidence Report regulation, which requires

community water systems to issue an annual report on drinking water quality. The proposal was published in the Federal Register on 13 May 1999. The EPA is requesting public comment through 13 July 1999 and has scheduled public meetings. A fact sheet, copy of the proposal, and a draft public notification handbook are available on the Internet at <http://www.epa.gov/safewater/>. Contact the Safe Drinking Water Hotline at (800) 426-4791 for more information.

### **EPA Draft Public Notification Handbook Available for System Owners**

Drinking water system owners and operators are provided step-by-step instructions on notifying the public of violations of federal standards in a draft Public Notification Handbook announced on 13 May 1999 by the EPA (64 FR 25880). By explaining new public notification requirements in simple, clear language and providing specific examples of notices, the EPA hopes the handbook will lead to an improved public notification process. The handbook can help systems determine what tier a violation falls into and what agency (such as a state regulator) to notify in the case of violations, the EPA states. It also summarizes the public notification requirements, describes delivery requirements for notices, and describes how to develop a notice. The EPA also issued a notice seeking comments on the draft. Comments on the draft handbook are due by 31 July 1999. Additional information concerning the draft handbook is available from the Safe Drinking Water Hotline at (800) 426-4791. Copies of the draft handbook are available electronically at <http://www.epa.gov/safewater/>.

### **EPA Outlines Water Program Vision**

The EPA's Assistant Administrator, J. Charles Fox, recently issued his vision for the EPA's national water program. Fox outlined recent accomplishments of the national water program and described focus areas for the national water program for the next few years. For the clean water program, areas include watershed restoration action strategies, Total Maximum Daily Loads (TMDLS), permit backlog, water quality standards program modernization, nonpoint source program upgrades, and water resource protection on Native American lands. For the safe drinking water program, areas include State capacity development, source water assessments, the unregulated contaminant rule, the class V underground injection control rule, and the public notification rule. Fox also outlined three areas of focus for building for the future: improving information about the conditions of waters; building a consensus for increased funding of water programs; and strengthening programs to protect coastal and estuarine waters. For a copy of the water program vision via the Internet, visit <http://www.epa.gov/OW/foxvis.html>.

### **Miscellaneous:**

#### **EPA Requests Public Comment on Enforcement Audit Policy**

The EPA announces the preliminary results on the evaluation of its "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) and is soliciting public comment on proposed revisions to the Audit Policy. The changes are based on data from extensive outreach including surveys of policy users. Some of the major preliminary results include: widespread use of the policy including 455 entities disclosing violations at approximately 1850 facilities; a user satisfaction rate at approximately 80% stating that they would use the policy again and recommend it to others; and a reduction of pollutants, and a reduced likelihood of spills and other accidents due to the voluntary discovery and correction of violations. The EPA is also proposing specific improvements to the policy. One significant proposed revision is to extend the prompt disclosure period from 10 to 21 days. A complete list of the preliminary results and proposed revisions will appear in the Federal Register soon. Interested parties should send comments in writing within 60 days of its publication notice. The EPA published the policy in the Federal Register on 22 December 1995 (60 FR 66705). Contact the EPA's Office of Enforcement and Compliance Assurance at (202) 564-2530 for a copy of the policy.

## CONFERENCES AND MEETINGS

- **24-26 August 1999: 8<sup>th</sup> Annual ITAM Workshop - Camp Riley, MN.** This year's workshop, entitled "Bridging the Gap - Working Together to Enhance Military Readiness into the 21<sup>st</sup> Century," is a forum for the scientific exchange of technologies, ideas, experiences, and lessons learned that relate to the application of Integrated Training Area Management (ITAM) on military training and testing lands. Refer to the ITAM homepage at <http://www.army-itam.com/> or call 927-5166 (DSN) or (757) 878-5166 (commercial) for registration materials and meeting information.

## ARIZONA

### *Regulatory Developments*

#### Air Quality:

- **Proposed Rule: Federal Rule Adoption.** The Arizona Department of Environmental Quality (ADEQ) is proposing a new rule to bring Arizona's state air program into compliance with federal requirements for Hazardous Medical Infectious Waste Incinerators (HMIWIs). The rule is expected to require each facility covered by the rule to obtain a Title V air permit, as is required by federal law. The ADEQ expects that approximately ten facilities will be required to comply with the federal standards or choose alternative methods of waste disposal. Military medical facilities will likely be impacted. HMIWIs in Maricopa, Pima and Pinal Counties will be subject to County, not ADEQ rules, but will still be part of the required State plan. The ADEQ originally published a notice of rulemaking docket opening on 05/15/98 to add the federal regulations for medical waste incinerators. Contact the ADEQ at (602) 207-2223 for additional information.

#### Water Quality:

- **Proposed Rule: Drinking Water Quality.** The ADEQ has issued a proposed rule to clarify its surface water treatment rule, which requires each public water system that is a "surface water system" to provide filtration and disinfection treatment. A public water system that uses groundwater that is under the direct influence of surface water is considered to be a surface water system that must provide treatment. The rule would establish the criteria to determine whether a groundwater source is under the direct influence of surface water. The rule would include monitoring requirements for public water systems that are suspected of using these groundwater sources. The Governor's Regulatory Review Council approved the rule at a meeting on 6 April 1999. In accordance with State law, the rule will become effective when published by the Secretary of the State, likely in June 1999. Contact the ADEQ at (602) 207-2227 for more information.

## CALIFORNIA

### *Legislative Developments*

The 1999-2000 California Legislature convened on 7 December 1998 and is scheduled to adjourn on 30 November 2000.

#### **Assembly Bill 50: Water Quality and Pollution Prevention**

**Summary:** Authorizes the State Water Resources Control Board and regional water quality control boards to require that an application for waste discharge requirements include a prescribed pollution prevention plan. Requires the State Board to incorporate the plans as part of the waste discharge requirements for specific dischargers. Requires that the State Board adopt regulations establishing specific standards for the issuance of waste discharge requirements. Prohibits the Board from prescribing waste discharge

requirements for publicly owned treatment works (POTWs) unless the Board determines the POTW requires discharge monitoring reports from its significant industrial users. Requires significant industrial users to submit discharge monitoring reports to a POTW up to once per month. Requires the Board to prescribe effluent limitations as part of the waste discharge requirements of a POTW. Authorizes a POTW to require pollution prevention plans as part of the pretreatment requirements applicable to significant industrial users.

**Status:** Introduced before the Assembly on 7 December 1998. Referred to the Committee on Environmental Safety and Toxic Materials on 3 March. Amended by Committee on 18 March and referred to the Committee on Appropriations on 23 March. The bill was suspended until a later date on 28 April 1999.

**Outlook:** Too early to predict prospects for passage. Passage of this bill would require federal facilities to audit all pollutants and provide a cost analysis for pollution prevention plans.

#### **Assembly Bill 57: Air and Climate Change**

**Summary:** Subjects upwind districts identified as having an overwhelming or significant contributing level of transported air pollutants to the enhanced vehicle inspection and maintenance program. Current law requires that the State Air Resources Board assess the relative contribution of upwind emissions to downwind pollution and to determine if the contribution is overwhelming, significant, inconsequential, or some combination. Certain areas of the state are also subject to an enhanced vehicle inspection and maintenance program.

**Status:** Introduced before the Assembly on 7 December 1998 and referred to the Assembly Committee on Transportation on 15 January. A hearing was scheduled for 3 March but was cancelled by the Committee. Amended in Committee and re-referred to the Committee on Appropriations on 12 May 1999.

**Outlook:** Prospects for passage are unclear. Similar legislation failed to pass last session.

#### **Assembly Bill 129: Prohibited Use of MTBE**

**Summary:** This bill would make it a misdemeanor to use methyl tertiary butyl ether (MTBE) in gasoline. The California Constitution requires the State to reimburse local agencies and school districts for certain costs mandated by the State. AB 129 would provide that no reimbursement is required.

**Status:** Introduced before the Assembly on 6 January and referred to the Assembly Committee on Transportation on 1 February. Amended in Committee on 19 April 1999.

**Outlook:** On 23 March 1999 Governor Davis ordered the phase-out of MTBE as a gasoline additive by 2002. The phase-out, instead of an immediate ban, represents a compromise among legislators, environmental groups, and oil industry. The Executive Order signed by the Governor requires the California Air Resources Board to adopt reformulated gasoline regulations. Governor Davis also requested that the EPA provide the State with a waiver from the oxygen mandate from the Clean Air Act. The Governor's Executive Order essentially makes legislation to address this issue unnecessary.

#### **Assembly Bill 241: Hazardous Waste Identification**

**Summary:** Deletes the requirement under current law that the hazardous waste code identification system require hazardous wastes that are identified pursuant to the RCRA criteria, but that are not regulated under RCRA, to be identified by a RCRA code. Prohibits the revised code system from requiring non-RCRA hazardous wastes to be identified by a RCRA hazardous waste code.

**Status:** Introduced before the Assembly on 28 January. Referred to Assembly Environmental Safety and Toxic Materials Committee on 4 February. Amended in Committee on 3 March and referred to the Committee on Appropriations on 23 March. Passed the Assembly on 22 April and transmitted to the Senate. Read on the Senate floor and referred to the Committee on Environmental Quality on 28 April 1999.

**Outlook:** Prospects for passage appear favorable. Legislative staff indicate no opposition to the bill in either chamber.

#### **Assembly Bill 264: Hamilton Army Airfield**

**Summary:** Authorizes the City of Novato to pay to any other taxing agency with territory located within a redevelopment project area within the boundaries of the Hamilton Army Airfield in the City of Novato any amounts of money that in the agency's determination are appropriate to alleviate any financial burden or detriment caused to the taxing agency by the redevelopment project.

**Status:** Introduced before the Assembly on 3 February. Referred to Assembly Housing and Community Development Committee on 12 February. Amended in Committee on 16 March. A hearing was held on 19 May 1999.

**Outlook:** Likely to be considered. Legislative staff indicate no opposition to the bill from either chamber. The Airfield was closed under BRAC and certain portions of the former base are being developed for residential housing and infrastructure bonds are being issued by the City of Novato. Other portions are under wildlife and wetland restoration plans and also include Coast Guard and Veterans Administration housing plans.

#### **Assembly Bill 399: Wetlands Development Permitting**

**Summary:** Revises provisions to require that every coastal development permit issued for any development within the coastal zone include a specified finding pertaining to public access and public recreation policies. Current law, the California Coastal Act of 1976, requires that any person wishing to perform or undertake any development in the coastal zone, as defined, obtain a coastal development permit, except as provided. The Act also requires that every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone include a specific finding that the development is in conformity with specified public access and public recreation policies.

**Status:** Introduced before the Assembly on 12 February 1999. Referred to the Committee on Natural Resources on 25 February. A hearing scheduled for 5 April 1999 was cancelled by the bill's sponsor.

**Outlook:** Prospects for passage are unclear.

#### **Assembly Bill 511: Nonpoint Source Pollution (I)**

**Summary:** Defines specified terms for purposes of the California Coastal Act of 1976 relating to nonpoint source pollution and requires that the specified access policies be implemented to take into account the need to reduce nonpoint source pollution. Revises specified coastal protection policies contained in the Act to encourage various management measures to prevent nonpoint source pollution. Requires that new development in the coastal zone comply with a specified nonpoint source management plan prepared pursuant to federal law. Requires that the California Coastal Commission prepare, implement, and monitor the plan known as the "Polluted Runoff Plan of the California Coastal Commission," annually and in a manner that ensures coordination among federal, state and local agencies, and the most efficient use of limited fiscal resources by those agencies.

**Status:** Introduced before the Assembly on 18 February and referred to Committee on Natural Resources on 4 March. Hearing held, reported from Committee and referred to Assembly Appropriations Committee on 5 April. Amended in Committee on 26 April. A hearing is scheduled for 24 May 1999.

**Outlook:** Prospects for passage are favorable. Legislative staff indicate no opposition at the committee hearing. Staff add that current law does not provide for runoff regulation by the Coastal Commission. The Commission controls development along the state's coastal zone area. Passage of this bill would likely result in addition reporting requirements from federal facilities.

#### **Assembly Bill 604: Nonpoint Source Pollution (II)**

**Summary:** Pertains to nonpoint source pollution. Requires that the State Water Resources Control Board, in consultation with the California Coastal Commission and the State Department of Health Services, establish measurable performance goals, to carry out the state's nonpoint source pollution program.

**Status:** Introduced before the Assembly on 19 February and referred to the Committee on Natural Resources on 23 March. As of 28 April 1999 the bill was being held in Committee.

**Outlook:** Likely to be considered. Passage of this bill would implement stricter discharge standards and likely effect federal facility operations.

#### **Assembly Bill 626: Endangered Species**

**Summary:** Pertains to the incidental taking of endangered species. Deletes the repeal date of existing law, providing that if any person obtains an incidental take statement under the federal Endangered Species Act from the Secretary of the Interior or the Secretary of Commerce, no further authorization or approval is necessary under the California Endangered Species Act for that person to take that species. Requires that person to notify the Director of the California Fish and Game Department.

**Status:** Introduced before the Assembly on 19 February and referred to the Committee on Water, Parks and Wildlife on 8 March. A hearing was scheduled for 13 April 1999, but was canceled by the sponsor.

**Outlook:** Prospects for passage are unclear. The sponsor was instrumental several years ago in passing incidental takings legislation, over the opposition of the environmental groups and certain legislators. It is expected that this bill will encounter strong opposition from the same groups.

#### **Assembly Bill 710: Ammonium Perchlorate**

**Summary:** Requires that the Department of Health Services (DHS) to establish a demonstration project regarding the removal of ammonium perchlorate from drinking water. Current law, the Calderon-Sher Safe Drinking Water Act of 1996, requires the DHS to submit to the legislature a Safe Drinking Water Plan for California once every 5 years, and to take all reasonable measures necessary to reduce the risk to the public health from waterborne illnesses in drinking water caused by cryptosporidium and giardia. The law also requires that the: (1) DHA adopt primary drinking water standards for contaminants in drinking water that are to be set at levels as close as possible to the corresponding public health goal; and (2) Office of Environmental Health Hazard Assessment perform a risk assessment and, based upon that risk assessment, adopt a public health goal for contaminants in drinking water based exclusively on public health considerations.

**Status:** Introduced before the Assembly on 24 February and referred to Environmental Safety and Toxic Materials Committee on 8 March. A hearing was scheduled for 13 April 1999, but was canceled by the sponsor.

**Outlook:** Likely to be considered. Perchlorate is the primary oxidizing component in solid rocket propellants, munitions, and fireworks. Staff indicate that perchlorate can interfere with the thyroid gland's ability to produce thyroid hormones, and can cause brain damage in fetuses and a potentially fatal form of anemia in adults at very high levels. In 1997, DHS tested 500 wells for perchlorate and detected the chemical in 20 percent of these wells. DHS has already set a guidance standard of 18 ppb of perchlorate in drinking water. Supporters of adopting standards for perchlorate include the California Association of Environmental Health Administrators, Planning and Conservation League and Sierra Club of California.

#### **Senate Bill 25: Human Health and Air Toxics**

**Summary:** The 22 March amendments impose specified requirements on the California Air Resources Board (CARB) relating to the protection of infants and children from environmental health hazards. Requires the CARB to carry out an ongoing review of criteria air pollutants and toxic air contaminants pursuant to specified schedules. Creates the Office of Children's Environmental Health and Protection within the Environmental Protection Agency to serve as chief advisor to the Secretary for Environmental Protection and to the Governor on matters relating to public health and environmental protection as it relates to children. Requires the Board to assess: (1) exposure patterns among infants and children that are likely to result in disproportionately high exposure to ambient air pollutants in comparison to the general population; (2) special susceptibility of infants and children to ambient air pollutants in comparison to the general population; (3) the effects on infants and children of exposure to ambient air pollutants and other substances that have a common mechanism of toxicity; and (4) the interaction of multiple air pollutants on infants and children, including the interaction between criteria air pollutants and toxic air contaminants.

**Status:** Introduced before the Senate on 7 December 1998 and referred to the Senate Committee on Rules 6 January. Reported from Committee and referred to the Committee on Environmental Quality on 24 March. Amended in Committee on 28 April. As of 17 May 1999, the bill is being held in Committee.

**Outlook:** Likely to be considered. The sponsor introduced this bill in 1997 but failed to achieve consensus to have it pass by the end of the 1998 session; this bill does not have the teeth that last session's AB 278 had. SB 25 requires the state to review air quality standards to determine if they adequately protect children's health and to revise those standards if they do not. The bill does not spell out what will be required of state agencies to carry out provisions of the bill. Governor Davis has indicated that he would sign the bill should it pass the Legislature.

#### **Senate Bill 47: Hazardous Waste**

**Summary:** Repeals and reenacts permanently the Carpenter-Presley-Tanner Hazardous Substance Account Act (state Superfund Law). The law: (1) imposes liability for hazardous substance removal or remedial actions; and (2) requires the Department of Toxic Substances Control (DTSC) to adopt criteria

for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the Act. Requires the DTSC or a California regional water quality control board, to prepare or approve remedial action plans for each listed site and provide for an arbitration process for the apportionment of liability for removal or remedial actions. Authorizes the DTSC to expend the funds in the Toxic Substances Control Account to pay for removal and remedial actions related to the release of hazardous substances. Annually appropriates: (1) \$5 million from the Hazardous Substance Clearing Account to pay the principal and interest on, bonds issued and sold pursuant to the Johnston- Filante Hazardous Substance Cleanup Bond Act provisions of the Act; and (2) \$1 million from the Toxic Substances Control Account to the DTSC as a reserve account for emergencies. Continuously appropriates specified funds deposited in a subaccount for removal and remedial actions at a specific site and funds in a subaccount established by the Controller for site operation and maintenance. Authorizes a person to apply to the State Board of Control for compensation of a loss caused by the release of a hazardous substance. Provides that any person who knowingly gives, or causes to be given, any false information as a part of a claim for compensation is guilty of a misdemeanor. This bill would repeal and reenact the Act, thereby extending the effect of the Act indefinitely. This bill would make an appropriation by reenacting the continuous appropriations specified above. The bill, by reenacting the Act, would also extend that misdemeanor provision, thereby imposing a state-mandated local program by creating a new crime. SB 47 would be effective immediately upon enactment.

**Status:** Introduced before the Senate on 7 December 1998. Referred to the Senate Committee on Environmental Quality on 7 January. Amended in Committee on 9 March and passed the Senate on 22 March. Transmitted to the Assembly and referred to the Committee on Environmental Safety and Toxic Materials on 23 March. Amended in Committee on 5 April and 22 April. Passed the Assembly and returned to the Senate for concurrence on 26 April. Returned to the Assembly for editorial correction on 29 April. Amended in Committee on 10 May. Passed the Assembly and returned to the Senate for concurrence on 17 May 1999.

**Outlook:** The Senate will concur with the Assembly amendments and repass the bill. SB 47 is likely to be signed by Governor Davis as well. The Department of Toxic Substances Control has issued emergency rules in order to continue to use the fund moneys to provide for cleanup actions. Legislators and interested parties have been working to develop consensus language to reform and enhance the law for the past two sessions. Industry withdrew its support from compromise legislation last session, citing the following objections: (1) orphan site provisions were vague and inadequate; (2) failure to modify the joint and several liability standard; (3) technical assistance funding for community groups (viewed as "activist funding"); (4) risk-based cleanup provisions inadequate; and (5) inadequate time to scrutinize provisions.

### **Senate Bill 89: Environmental Equity/Justice**

**Summary:** Requires the Secretary for Environmental Protection, not later than 1 April 2000, to convene a Working Group on Environmental Justice, comprised of representatives from each environmental agency, for the purpose of: (1) identifying disproportionately high and adverse human health or environmental effects on minority populations or low-income populations; and (2) providing guidance to state agencies that implement, administer, and enforce environmental laws in the state. Requires each environmental agency, in cooperation with the Working Group on Environmental Justice, to take specific actions to develop an agencywide strategy to identify and address issues relating to environmental justice. Defines "environmental justice" as the fair treatment of people of all races, cultures, and income levels with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

**Status:** Introduced before the Senate on 7 December 1998. Referred to the Senate Committee on Environmental Quality on 6 January. Amended in Committee and referred to the Committee on Appropriations on 5 April. A hearing was held on 10 May 1999.

**Outlook:** Likely to be considered. Similar legislation passed during the previous several legislative sessions, but was vetoed by former Governor Pete Wilson. The sponsor is optimistic that the legislation will pass this session and that Governor Gray Davis (D) will sign it. Sponsor expects support from the Sierra Club and Communities for a Better Environment.

**Senate Bill 98: Alternative Fuels**

**Summary:** Extends the \$1 vehicle registration renewal fee that funds the South Coast Air Quality Management District's (SCAQMD) projects for increased utilization of clean burning fuels from 1 August 1999 to 1 August 2004.

**Status:** Introduced before the Senate on 7 December 1998. Referred to the Committee on Transportation on 20 January and amended on 2 March. Referred to the Committee on Appropriations on 16 March. Amended in Committee and referred to the Committee on Transportation on 14 April. Reported from Committee and referred to the Assembly Appropriations Committee on 10 May. A hearing was held on 19 May 1999.

**Outlook:** Prospects for Assembly passage are favorable. Supporters contend that the \$1 surcharge is still needed because the SCAQMD is the only designated "extreme" nonattainment area in the nation, while the district is heavily reliant on technology advances and clean fuels to make progress toward air quality standards attainment. Similar legislation was vetoed by Governor Wilson last year.

**Senate Bill 115: Human Health and Environmental Equity/Justice**

**Summary:** Requires the Office of Planning and Research to recommend proposed changes in the guidelines used in implementing the California Environmental Quality Act (CEQA) to provide for the identification and mitigation by public agencies of disproportionately high and adverse environmental effects of projects on minority populations and low-income populations by 1 January 2001. Requires that the Office, in consultation with other state agencies, review its available databases and other available databases and information to identify affected communities and populations by 1 January 2001.

**Status:** Introduced before the Senate on 17 December 1998. Referred to the Senate Committee on Environmental Quality on 7 January. Amended in Committee on 10 March and referred to the Committee on Appropriations on 5 April. A hearing was held on 10 May 1999.

**Outlook:** Likely to pass and be signed by Governor Davis. Similar legislation passed during the previous sessions but was vetoed by former Governor Wilson.

**Senate Bill 136: Air Permitting**

**Summary:** Provides that the City of Los Angeles is fully responsible for the costs associated with the implementation of air quality mitigation measures within the Owens Valley Planning Area. Requires that the mitigation measures be implemented so that the Planning Area attains federal ambient air quality standards by December 31, 2006. Requires that the state Controller deduct compliance costs pertaining to the Owens Dry Lake Planning Area from any funding directed to Los Angeles until costs are recovered. Deletes the prohibition on the: (1) air quality mitigation measures affecting the right of the City of Los Angeles to produce, divert, store or convey water; and (2) Great Basin Unified Air Pollution Control District's authority regarding water production activities of the City. Authorizes the City to bring a judicial action to challenge a measure or fee imposed by the District.

**Status:** Introduced before the Senate on 4 January and referred to the Committee on Environmental Quality on 20 January. A Committee hearing has been scheduled for 19 April. Amended in Committee on 27 April. Hearing held and reported from Committee on 17 May 1999.

**Outlook:** Prospects for passage are unclear. Military operations and public health at China Lake have been adversely impacted for years by air pollution emanating from the Owens Dry Lake bed. Funding for mitigation measures will be of benefit to military interests in the region.

**Senate Bill 212: Inspection and Maintenance Programs**

**Summary:** Establishes an enhanced emissions and inspection program in any district of origin of upwind emissions, any part of which: (1) is classified the EPA as a nonattainment area for ozone; and (2) has been determined by the California Air Resources Board (CARB) to make an overwhelming or significant contribution to downwind ozone ambient air pollutant levels in a different district that is not in attainment.

**Status:** Introduced before the Senate on 20 January and referred to the Senate Committee on Transportation on 27 January. Reported from Committee and referred to the Committee on Appropriations on 20 April. Hearing held and bill held in Committee on 10 May 1999.

**Outlook:** Prospects for passage are unclear. Similar legislation failed to pass last session.



**Senate Bill 227: Water Quality**

**Summary:** Requires the California Coastal Commission and the City of Monterey to: (1) contract with the State Water Resources Control Board to prepare a model for urban nonpoint source pollution protection; and (2) make the program available to specific local coastal governments. Requires that the Commission and the Board enforce a coastal nonpoint source pollution control program with specified components. Requires the development and implementation of management measures for nonpoint source pollution that protect and improve the quality of coastal waters. Requires the Commission to recommend to the Office of Planning and Research (OPR) guidelines relating to watershed, water quality, and nonpoint source pollution impacts of projects. The OPR will submit recommendations to the Secretary of the California Resources Agency.

**Status:** Introduced before the Senate on 26 January and referred to the Senate Committees on Natural Resources and Water and Environmental Quality on 3 February. Amended in Committee and referred to the Committee on Appropriations on 23 March. A hearing was held and the bill was held in Committee on 17 May 1999.

**Outlook:** Prospects for passage are unclear. Similar legislation failed to pass last session and the current bill is being held on the Senate suspense file for consideration at a later date.

**Senate Bill 231: Cleanup Liability**

**Summary:** Exempts public vessels from certain requirements under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The Act prohibits the operation of a nontank vessel of 300 gross registered tons or greater in the marine waters of the state unless the owner or operator prepares and submits an oil spill contingency plan to the administrator for oil spill response, in accordance with prescribed procedures and requirements, and the plan is approved. Defines "public vessel" as a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision, or by a foreign nation, except when the vessel is engaged in commerce.

**Status:** Introduced before the Senate on 25 January and referred to the Senate Committee on Local Government on 3 February. Passed out of Committee and re-read on the Senate floor on 4 March 1999; placed on the Senate consent calendar. Amended on the Senate floor and re-referred to the Committee on Local Government on 6 April 1999.

**Outlook:** Too early to predict prospects for passage.

**Senate Bill 635: Drinking Water Contaminants**

**Summary:** Requires the Office of Environmental Health Hazard Assessment (OEHHA) to prepare and publish an assessment of the risks to public health posed by each contaminant for which the department proposes a primary drinking water standard. Requires that the risk assessment contain an estimate of the level of the contaminant in drinking water that may cause or contribute to adverse health effects that would be known as the public health goal for the contaminant. Revises the criteria upon which the public health goal for each contaminant would be based. Current law requires that the OEHHA shall perform a risk assessment and, based upon that risk assessment, adopt a public health goal for contaminants in drinking water based exclusively on public health considerations for each drinking water contaminant regulated, or proposed to be regulated, by the Department of Health Services pursuant to a primary drinking water standard.

**Status:** Introduced before the Senate on 24 February and referred to Senate Environmental Quality Committee on 10 March. Amended in Committee on 3 May. A hearing was held, reported from Committee, and referred to the Senate Committee on Appropriations on 10 May 1999.

**Outlook:** Likely to move.

**Senate Bill 755: CEQA Impact Fees**

**Summary:** Provides that an environmental document prepared pursuant to the California Environmental Quality Act (CEQA) is not valid for use in a subsequent project if the certification of the document occurred more than 5 years before the filing of an application for that subsequent project. Requires a lead agency, under the CEQA, to find that a project may have a significant impact on the environment and would require an environmental impact report to be prepared for a project if the lead agency makes specified findings. Authorizes a lead agency to refuse to approve a project if it makes specified determinations.

**Status:** Introduced before the Senate on 24 February and referred to the Committee on Environmental Quality on 10 March. Amended in Committee on 5 April. Reported from Committee and referred to the Committee on Appropriations on 19 April. Amended in Committee on 27 April. A 17 May 1999 Committee hearing was canceled by the sponsor.

**Outlook:** Likely to be considered. Passage of SB 755 has the potential to delay CEQA reviews concerning military projects by State agencies. The California Chamber of Commerce opposes the bill, calling it one of the "ten worst bills" of this session and asserting that it will raise the cost of doing business in the State.

#### **Senate Bill 1099: Defense Retention and Conversion Act**

**Summary:** This bill would enact the California Defense Retention and Conversion Act of 1999 to establish the California Defense Retention and Conversion Council in the Trade and Commerce Agency. The bill would set forth the membership and duties of the council in regard to defense retention and conversion and military base reuse activities in the state, including the administration of a Defense Retention Grant Program and specified activities developed by the former California Defense Conversion Council.

**Status:** Introduced before the Senate on 26 February and referred to the Committee on Government Organization on 18 March. A Committee hearing is scheduled for 27 May 1999.

**Outlook:** Likely to be considered. The bill creates an increased effort to retain military installations and facilities by resolving conflicts between State government and the DoD.

#### **Senate Bill 1269: Diesel Exhaust**

**Summary:** New provisions require the Office of Environmental Health Hazard Assessment (OEHHA) to conduct the necessary scientific studies to evaluate the exposure of the residents of this state to vehicular diesel exhaust in a range of reasonable anticipated circumstances, and to make this exposure information available. Current law, as provided by the Governor's Reorganization Plan No. 1 of 1991, authorizes the OEHHA to perform specified activities relating to the assessment of the health risk of chemicals on humans, and to provide toxicological and scientific consultation. Original version authorized a lead agency, in consultation with the State Air Resources Board, to adopt specific regulations that provide a uniform, statewide warning requirement for environmental exposures to diesel engine exhaust.

**Status:** Introduced before the Senate on 26 February and referred to the Committee on Environmental Quality on 17 March. Reported from Committee and referred to the Committee on Appropriations on 19 April. Amended in Committee on 27 April. Hearing held and the bill was reported from Committee on 17 May 1999.

**Outlook:** Likely to pass. Legislative staff state that the sponsor hopes to develop a solution for community-wide noticing for diesel exhaust and prevent future lawsuits. According to agency staff, the CARB extended the comment period to the middle of March for its draft diesel-emission risk management guidance, the first part of a multiple report plan to reduce diesel-engine emissions. The plan would affect both mobile and stationary diesel sources to determine potential exposure to and impacts on general populations. Last year, CARB listed diesel as a toxic air contaminant (TAC), which initiated the regulatory activity. Legislative staff note that the Health Effects Institute (HEI) is expected to issue its own evaluation of risk factors associated with diesel emissions. The EPA is likely to issue its risk factor estimates soon.

### ***Regulatory Developments***

#### **Air Quality:**

- **Direct Final Rule: SIP Revisions.** The EPA is taking direct final action to approve revisions to a number of South Coast Air Quality Management District (SCAQMD) rules contained in the SCAQMD Regulation II. The SCAQMD submitted these rules for the purpose of meeting the requirements of the Clean Air Act (CAA) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This approval action will incorporate these rules into the federally approved State Implementation Plan (SIP) for California. The rules were submitted during 1991 and 1994 by the State to satisfy certain federal requirements for an approvable NSR-SIP. The EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. The rule is effective on 12 July 1999 unless the EPA

receives adverse comments. If the EPA receives such comment, it will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect. Contact the EPA at (415) 744-1261 for additional information.

- **Direct Final Rule: SIP Revisions.** The EPA is taking direct final action on revisions to the California SIP. The revisions concern rules from the following: Kern County Air Pollution Control District (KCAPCD), Lake County Air Quality Management District (LCAQMD), Modoc County Air Pollution Control District (MCAPCD), Northern Sierra Air Quality Management District (NSAQMD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and Ventura County Air Pollution Control District (VCAPCD). The rules control particulate matter (PM) emissions from open burning, fuel burning equipment, or processes identified by a weight rate throughput. This approval action will incorporate these rules into the federally-approved SIP. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the CAA. The EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas. The rule is effective on 19 July 1999 unless the EPA receives adverse comments by 17 June 1999. If the EPA receives such comments, then it will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect. The EPA can provide additional information concerning the rule: (415) 744-1135.
- **Proposed Rule: Reformulated Gasoline.** The California Air Resources Board (CARB) is proposing two amendments to the California Reformulated Gasoline Rule. The first amendment proposes to require a labeling requirement for Methyl Tertiary Butyl Ether (MTBE). Although MTBE is currently in the process of being phased out as a gasoline additive, this interim measure will require statewide labeling for fuel containing MTBE. The proposed labeling requirement will apply to retailers who sell gasoline that contains MTBE in concentration greater than 0.3% by volume and will require conspicuous labeling that the gasoline contains MTBE. The proposal will also require that transporters delivering gasoline to retail stores provide documentation in the bill of lading or other written material identifying the presence and concentration of MTBE in the gasoline. The second amendment will allow for the removal of the minimum 1.8% oxygen in every batch of winter gasoline in areas where the minimum oxygen requirement is no longer needed to achieve the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). Contact the CARB at (916) 327-5986 for more information.
- **Proposed Rule: New Source Review.** The South Coast Air Quality Management District (SCAQMD) is considering amendments to its regulations for New Source Review for reporting and monitoring requirements for NO<sub>x</sub> and SO<sub>x</sub>. The NSR amendments are aimed at applicability, emission increases, new sources, and trading zone restrictions. The changes to the NO<sub>x</sub> and SO<sub>x</sub> rules would clarify relative accuracy test audit requirements, monitoring requirements, and reporting requirements for major sources. For major sources and large sources, the proposed amendments will add monitoring requirements and add emissions calculating methods. For process units, the proposed amendments will establish concentration limits for determining emissions and add guidelines for category specific emission rates. Contact the SCAQMD at (909) 396-2676 for more information.
- **Notice: Prevention of Significant Deterioration.** The South Coast Air Quality Management District (SCAQMD) announces its intent to solicit information and suggestions from the public on proposed amendments to Regulation XVII, Prevention of Significant Deterioration. This regulation sets forth review requirements for stationary sources to ensure that air quality in clean areas does not significantly deteriorate while maintaining a margin for future industrial growth. The proposed amendments seek to come into conformity with federal standards, by removing more stringent standards currently utilized by the state. The SCAQMD is proposing to raise the listed/unlisted threshold from 25/40 tons per year (under current state rule) to 100/250 tons per year (the federal rule). However, the New Source Review (NSR) requirements, which are currently more stringent than

federal PSD requirements, will still apply to these sources so there will be no impact on emissions or air quality. Contact the SCAQMD at (909) 396-2229 for additional information.

## HAWAII

### *Legislative Developments*

The 20th Hawaii State Legislature convened on 20 January 1999, and adjourned on 5 May 1999. The Legislature introduced approximately 3,400 bills this session. Legislative leadership has indicated that a special session may be called in August to address several potential vetoes by Governor Cayetano. The Governor has until 25 June 1999 to veto bills, and 12 July 1999 to approve them.

#### **House Bill 1277: Wastewater Treatment Facilities**

**Summary:** Excludes from definition of public utility any facility that reclaims wastewater provided that at least 10 per cent of the wastewater processed is used by a state or county agency.

**Status:** Introduced before the House on 28 January and referred to the House Committees on Finance and Energy and Environmental Protection. Amended and passed out of Committees on 25 February and returned to the House floor for a second reading. Passed the House on 3 March and transmitted to the Senate. Introduced before the Senate and referred to the Committees on Labor and Environment and Commerce and Consumer protection on 4 March. Passed back to the House with Senate amendments on 25 March. Signed by the House Speaker and Senate President on 5 May 1999 and transmitted to Governor Cayetano for his consideration.

**Outlook:** The Governor has indicated neither his support nor contempt for the bill.

#### **House Bill 1548: Wastewater Reuse**

**Summary:** Defines "recycled water" and "reclaimed water" as water, which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

**Status:** Introduced before the House on 28 January and referred to the Committees on Energy and Environmental Protection and Finance on 1 February. Amended in the EEP Committee and passed out of both Committees on 25 February. Reread on the Senate floor and passed on 3 March. Transmitted to the Senate, introduced, and referred to the Senate Committee on Labor and Environment on 4 March. Amended in Committee on 18 March and passed the Senate on 29 March. Signed by the House Speaker and Senate President on 5 May 1999 and transmitted to Governor Cayetano for his consideration.

**Outlook:** Too early to predict prospects for the Governor's approval. HB 1548 has a companion bill in the Senate (SB 1404).

#### **House Resolution 45: Makau Military Reservation**

**Summary:** Requests that the U.S. Army further informs and involves the public on military and related activities at the Makau Military Reservation on Oahu. The Makau site provides habitat to approximately 30 sensitive species; the Hawaii Legislature states that hundreds of fires have been caused by live-firing training and may imperil the species. The Resolution encourages the Army to conduct water and sediment sampling, to engage and inform the public when preparing environmental documents related to major live-fire military training or related activities. Finally, the Resolution requests that the Hawaii Department of Land and Natural Resources reexamine the State's lease of Makau Valley land to the Army.

**Status:** Amended in the House Committee on Public Safety and Military Affairs; passed the House and Senate on 15 April 1999.

**Outlook:** Sources familiar with military environment and training issues state that restrictions in training at Makau would seriously impact military readiness because the reservation is the only facility of its size in that part of the world. Training could be halted during preparation of an Environmental Impact Statement. The WREO will continue to monitor developments related to HR 45.

**Senate Bill 738: Noise Pollution**

**Summary:** Shortens the allowable period for the permit review process for noise pollution permits to 30 days.

**Status:** Introduced before the Senate on 22 January and referred to the Senate Committees on Labor and Environment and Health and Human Services (HHS) on 25 January. Passed out of the Committee on HHS on 11 February unamended. Passed out of the Committee on Labor and Environment on 18 February unamended. SB 738 was re-referred back to the Committee on HHS on 3 March by the full Senate. Amended in Committee on 5 March and sent back to the Senate floor for consideration. Passed the Senate and transmitted to the House on 9 March. Passed by both the House and Senate on 27 April and enrolled to the Governor on 28 April 1999.

**Outlook:** Governor Cayetano signed SB 738 into law (creating Act 58) on 13 May 1999.

***Regulatory Developments***

No significant regulatory developments were noted for the State of Hawaii during the reporting period.

<b>NEVADA</b>
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***Legislative Developments***

The Nevada State Legislature adjourned on 31 May 1999.

**Assembly Bill 41: Water Pollution Control**

**Summary:** Prohibits the Director of the Department of Conservation and Natural Resources (DCNR) from making certain determinations concerning the control of water pollution if the determination is based solely upon information provided by an agency of the United States or the State (other than the DCNR), or is made without conducting an investigation.

**Status:** Prefiled with the Assembly on 12 January. Read and assigned to the Committee on Natural Resources, Agriculture and Mining on 1 February. AB 41 was amended in Committee and passed back to the Assembly floor on 1 March. Amended in Committee and referred to the Committee on Ways and Means on 23 March 1999.

**Outlook:** Too early to predict prospects for passage.

***Regulatory Developments***

No significant regulatory developments were noted for the State of Nevada during the reporting period.